Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
Lifeline and Link Up	)	WC Docket No. 03-109
Universal Service Contribution Methodology	)	WC Docket No. 06-122
Numbering Resource Optimization	)	CC Docket No. 99-200
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
Intercarrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68
IP-Enabled Services	)	WC Docket No. 04-36

COMMENTS OF CENTURYTEL, INC.

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SUMMARY

The Commission is to be commended for moving global reform of both intercarrier compensation and universal service issues forward. CenturyTel also appreciates the diligent and responsible efforts of the Federal-State Joint Board for its critical recommendations in the universal service area. CenturyTel supports the reform process provided that the Commission adopt reasonable outcomes that protect consumer interests and encourage investment in networks that are necessary to provide modern voice and broadband communications. The specific proposals made in the *Further Notice* are a good starting point for discussion purposes, but cannot be adopted in their current form because they fail to adequately protect consumers, may jeopardize rural network investment, and will likely be the subject of significant legal and constitutional challenges.

Particularly in these troubled economic times, the FCC should ensure that its regulations predictably achieve positive outcomes for consumers and carriers. In reforming intercarrier compensation and universal service, the FCC should keep four goals in mind:

- Uneconomic arbitrage must be reduced
- Universal service should be stabilized by controlling its growth and retargeting support to the most needed areas.
- Consumer interests should be protected by preventing unreasonable price increases and ensuring the availability of advanced services.
- Investment in rural networks that are necessary to bring modern communications services to rural consumers should be protected.

By focusing on these four key principles, the FCC can reposition the intercarrier compensation and universal service mechanisms to fulfill the original affordability and comparability goals that Section 254 of the Communications Act ensures for rural Americans, as well as to ensure just and reasonable rates.

If the Commission cannot agree on a complete plan for the reform of these two important areas, then, at a minimum, it should adopt needed reforms in certain areas where a greater degree of consensus has already been reached. The proposals attached to the Further Notice already propose a workable framework in several key areas of consensus. Thus the Commission should (1) adopt reform of the universal service contribution mechanism to assess payments on a combination of working telephone numbers and connections, where telephone numbers are not employed, (2) eliminate the identical support rule, and (3) adopt "phantom traffic" rules that require carriers to correctly identify the origination of traffic so that carriers may properly jurisdictionalize and rate traffic that is received from other carriers. Such easily adopted reform can provide an excellent base from which to better evaluate how to make more controversial reform measures in a future rulemaking.

Intercarrier compensation should be reformed over a reasonable period of time in order to reduce regulatory arbitrage, protect consumers, and encourage rural network investment. The current proposals are good in that they recognize a long period of time is necessary so that consumers can adjust to changes and carriers can accommodate the revenue shifts through responsible and efficient evolution of operations. US Telecom's proposals provide a useful framework for reform that can meet these goals.

The FCC should adopt the Independent Telephone & Telecommunications Alliance ("ITTA") plan to phase in intercarrier rate reductions, coupled with the alternative cost recovery mechanisms it proposes. That plan provides:

- Years 1-3: A price-cap carrier's intrastate terminating access rates shall be unified to its CALLS target rate in equal increments over three years by study area. If the local reciprocal compensation rate is above the CALLS rate it will be reduced to the CALLS level over the same transition.
- Years 4-5: Beginning in year four and continuing through year five, the unified interstate/intrastate/local rate shall be reduced to lesser of the current rate for such

service or the carrier's next lower interstate CALLS target by study area pursuant to 47 C.F.R. § 61.3(qq) (*i.e.*, $0.0095, $0.0065, or $0.0055). By way of example, if a study area's current CALLS target is $0.0095, then it would move to $.0.0065 in years 4-5; if current CALLS target is $0.0055 it would stay at this level.

- The Commission shall issue a FNPRM after year 4 to determine whether additional measures are necessary. This FNPRM shall include a referral to the Federal-State Joint Board on Universal Service to address separations and other relevant matters.

ITTA's proposal produces significant rate reductions that should benefit consumers and carriers alike. It also takes into account the cost characteristics of the carriers involved, therefore, avoiding the reduction of rates below cost. Finally, it includes a reevaluation of how the plan is working in order to determine what further steps, if any, should be taken in accordance with the facts in existence at that time. The plan is a win-win for consumers and carriers alike, and spreads the "pain" around: it does not provide everything any carrier, including CenturyTel, might want. Therefore, it should be adopted.

The Commission must constitutionally provide all carriers a reasonable opportunity to recover lost revenues from rates which were set according to regulatory mandate. CenturyTel recommends an alternative method of cost recovery employing a modest mechanism of reasonable subscriber line charge increases, a realistic, but minimalistic, alternative recovery mechanism ("ARM"), and perhaps a local rate benchmark. The ARM should be available to any carrier, recognizing that the more urban carriers operate in low cost areas and will probably not require any ARM. The more moderate rate changes will also ameliorate the size of any ARM.

However, the fact that a carrier is regulated pursuant to price caps does not change the constitutional need for regulators to provide a reasonable opportunity to recover costs from regulated telecommunications services because price cap regulation does constrain pricing. The FCC has made similar revenue neutral modifications in the past. In addition, payment of dividends is part of the normal cost of obtaining equity, something the FCC has always encouraged in the past. Since dividends are not considered in the ratesetting or universal service processes, however, they should be viewed as irrelevant to whether a carrier may recover costs from the ARM. Finally, the FCC should jettison the proposals' attempt to mandate cross-subsidies of regulated services with unregulated revenues. Such a policy is inconsistent with past precedent and is economically irrational.

The FCC should adopt the ITTA proposal for alternative cost recovery. The plan is as follows:

- An ARM shall be established to enable revenue replacement opportunity for revenue losses due to mandated rate reductions.
- The ARM shall be available to non-National price-cap carriers that lack a combination of National wireless and wireline local and long-distance coverage, *e.g.*, all price cap carriers to the exclusion of AT&T and Verizon, the latter of which have advocated specific terminating rates that are presumably sufficient for themselves.
- For Years 1-3, the ARM shall equal annual revenue loss due to intrastate access rate reductions and reciprocal compensation reductions, adjusted annually to reflect access line counts on December 31 of the preceding year.
- For Years 4-5, the ARM shall equal 50 percent of the total reduction attributed to the lowest CALLS-targeted reductions rates, plus 100 percent of the cumulative total from Years 1-3.
- SLC increases shall be phased-in in equal increments during years 1-3 at $0.50 per year for residential lines. SLC increases for multiline business ('MLB") shall be phased-in at $0.75 per year in years 1 and 2, and $0.80 in year 3. Accordingly, the total SLC increase for residential lines shall be $1.50; the total SLC increase for MLB shall be $2.30.

The FCC can also consider adopting a local rate benchmark, based on the national urban local exchange rate, which is currently about $20.76. If a carrier does not price at that level, it would forego ARM support in the amount its rates are below the national benchmark. It requires ILECs to forego access revenues and is therefore not a "make whole" proposal. Such proposals would moderate any consumer price increases, but continue to support carrier efforts to build out and maintain rural networks necessary to provide modern voice and broadband services.

The FCC should also consider reforms to the universal service distribution mechanism to support broadband and other forms of support in high cost areas. One hundred percent coverage for broadband is overly ambitious at this time and fails to account for difficulties associated with the current measurement systems. Rather, the FCC should consider adopting the Embarq BCS plan, coupled with the Qwest a $500 million broadband pilot program.

CenturyTel supports the proposal of the Federal-State Joint Board, Qwest, and others to establish a limited, broadband pilot project which can provide funds for constructing and provisioning broadband to currently unserved areas. The FCC could also mandate 90 percent coverage from any technology at the study area level, but should not require a carrier to file a waiver to use any particular type of coverage as long as the service meets the criteria. In addition, before such a commitment could be imposed, the FCC would need to adopt the Chairman's proposal to freeze by study area, the existing levels of support to sustain such a requirement. Once broadband mapping becomes available within five years, the FCC and carriers can then better evaluate whether further coverage is possible or desirable, and how it could be attained.

Finally, the FCC should find that providers of IP-enabled services are providing voice telecommunications services, and therefore should be assessed the applicable intercarrier compensation rate for such traffic. IP-enabled voice communications use ILEC networks in precisely the same way as do more traditional carriers. The FCC long ago tentatively concluded that such traffic should be treated the same, and the FCC should adopt that tentative conclusion now.

For all the foregoing reasons, the FCC should move forward with global intercarrier compensation and universal service reform as proposed herein.

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IP-Enabled Services	)	WC Docket No. 04-36

COMMENTS OF CENTURYTEL, INC.

CenturyTel, Inc. ("CenturyTel"), on behalf of its operating subsidiaries, hereby files these comments in the above-captioned proceeding in response to the Commission's Further Notice of Proposed Rulemaking released on November 5, 2008 in the above-captioned proceedings.[1] The

[1] *High-Cost Universal Service Support*, WC Docket No. 05-337, et al., Order on Remand & Report & Order and Further Notice of Proposed Rulemaking, FCC No. 08-262 (rel. Nov. 5, 2008)("*ICC-USF FNPRM*" or "*Further Notice*").

Further Notice requests comments on an expedited basis concerning three separate proposals submitted in writing by Chairman Martin to all Commissioners.[2] When taken together, the three proposals contain proposed rules addressing the global reform of intercarrier compensation and universal service. The Order itself states that the Commission would not address the Recommendation of the Federal-State Joint Board on Universal Service.[3] The proposals do, however, address some of the universal service issues raised in three Notices of Proposed Rulemaking that were issued by the Commission in March 2008.[4]

CenturyTel congratulates the Commission for its expressed commitment to addressing global reform of federal intercarrier compensation and universal service policy. CenturyTel also commends the good work of the Federal-State Joint Board on Universal Service in making thoughtful proposals that can advance reform in a responsible manner. CenturyTel strongly supports the reform process provided that the Commission adopt reasonable outcomes that protect consumer interests and encourage investment in networks that are necessary to provide modern voice and broadband communications. Rural America depends on the FCC's diligent administration of the intercarrier compensation and the universal service systems, based on the

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2 The Order also responds to the Court of Appeals for the District of Columbia Circuit on remand. *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002) ("*WorldCom*").

3 *High-Cost Universal Service Support*, WC Docket No. 05-337, 22 FCC Rcd 20477, 20506 (Fed.-St. Jt. Bd. USF, 2007)("*Comprehensive USF Reform Recommended Decision*"). Notwithstanding, the Order declines to implement the Recommended Decision, but instead expresses interest in exploring further the issues contained in that Decision. *ICC-USF FNPRM* at ¶ 30.

4 *See High-Cost Universal Service Support*, WC Docket No. 05-337, 22 FCC Rcd 20477, 20506 (Fed.-St. Jt. Bd. USF, 2007)("*Comprehensive USF Reform Recommended Decision*"). *See also High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, 23 FCC Rcd 1531 (2008 ("*Joint Board Comprehensive USF Recommended Decision NPRM*"); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, 23 FCC Rcd 1467 (2008)("*Identical Support Rule NPRM*"); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, 23 FCC 1495 (2008) ("*Reverse Auctions NPRM*")(collectively "*USF Notices*").

principles enunciated in the Communications Act. CenturyTel urges the FCC to adopt comprehensive reforms to these systems that will provide predictable, explicit, and sustainable support for critical telecommunications infrastructure. These reforms should restore the original congressional mandate: to ensure that consumers in rural, high cost, and insular areas receive affordable telecommunications services while having access to advanced services. Importantly, the reforms should not produce a regulatory bait-and-switch situation either by radically shifting rate regulation without providing an opportunity to recover prudently invested costs or by ignoring the very rural consumers that large, integrated, urban carriers have abandoned to ILECs willing to serve them, such a CenturyTel.

I. REDUCTION OF REGULATORY ARBITRAGE, STABILIZATION OF UNIVERSAL SERVICE, PROTECTION OF CONSUMERS AND RURAL NETWORKS SHOULD GUIDE ANY REFORM EFFORTS.

Any reform efforts should be guided by four basic principles in the context of the current economic conditions. First, the FCC should reduce uneconomic arbitrage in the current intercarrier compensation system. Second, the FCC should stabilize the universal service system by controlling its growth, and retargeting support to the most needed areas. Third, it should protect consumer interests by preventing unreasonable price increases and ensuring the availability of advanced services. Fourth, the Commission should encourage investment in rural networks that are necessary to bring modern communications services to rural consumers.

The country is facing far-reaching and uncertain economic times, characterized by a national credit crisis, volatile consumer price changes, declining home values, and rising unemployment rates. Any comprehensive reform of intercarrier compensation and universal service should only be undertaken with a recognition of the tough economic decisions consumers are facing in the foreseeable future. What’s more, with the credit markets drying up, access to scarce capital is one of the most critical challenges facing rural network providers. The FCC’s stewardship role should dictate that FCC regulations be crafted to create positive or, at least neutral, impacts on equity and debt investment in these markets. Only reform efforts that provide incentives for deploying network investment, ensuring cost recovery for previous investments, and encouraging deployment of advanced services like broadband should be undertaken at this time.

Reduce regulatory arbitrage. Increasing financial pressures in the communications marketplace, plus the introduction of non-traditional technologies that do not operate pursuant to traditional engineering and operational principles, have eroded the economic underpinnings of the current intercarrier compensation regime. The current historical regulations have created widely disparate compensation mechanisms, many of which spread the recovery of capital investment over years into the future. This regulation mandates rates for different types of carriers and different types of services, even though as an economic matter, the rates should apply to all traffic. These disparate rates have been created by regulatory bodies, not from the purely economic choices of carriers.

There is widespread consensus throughout the industry that the intercarrier compensation regime needs to be reformed to eliminate this regulatorily created arbitrage.[5] These uneconomic opportunities have permitted carriers to misroute and misidentify traffic in order to take advantage of the different compensation rates, minimizing their costs for use of another carrier's telephone network—all with little benefit to consumers and with no penalties or repercussions for their actions. This activity has also resulted in large amounts of traffic being terminated on a carrier's network for which the network owner does not know how or who to bill. Taking

5 *See, e.g., Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, CC Docket No. 01-92, 20 FCC Rcd 4685 (2005)("*Intercarrier Compensation FNPRM*").

responsible steps toward reducing uneconomic arbitrage will produce just and reasonable rates and encourage network investment by stabilizing revenues and permitting carriers to more predictably recover their costs of providing these networks.

Stabilize universal service. At the same time, universal service is in dire need of reform. By the end of 2007, the high cost support from the Universal Service Fund ("USF") reached $4.3 billion per year. While the goals and objectives of the high cost program of universal service are noble and required by statute, there are some unjustifiable and unforeseen inequities in the current contribution and distribution mechanisms which have placed unnecessary strain on the USF since 2001. In recent years, this growth has been due mostly to increased support provided to competitive eligible telecommunications carriers ("CETCs") based on the identical support rule.[6] At the same time, the current system has failed to provide sufficient support for certain services such as broadband or in rural areas serviced by price cap companies. These holes in funding ought to be addressed in any reform of the universal service system. Furthermore, the current contribution system is based on declining interstate and international revenues, leading to ever higher contribution percentage markups, which all consumers must ultimately pay. The size of the USF should be controlled, and retargeted, based on a stable source of funding.

Protect consumer interests. The FCC should make consumer interests paramount in assessing the wisdom of any global reforms. Consumers should be protected from excessive or unreasonably rapid price increases. This is particularly true for rural customers, who by law must be able to obtain affordable communications services at comparable prices to those available in urban areas under Section 254. In addition, rural consumers tend to suffer the most during tough economic times. But maintenance of low prices alone would be worthless if

[6] High-Cost Universal Service Support, WC Docket No. 05-33723 FCC Rcd 8834, ¶ 6 (2008)("*CETC Price Cap Freeze Order*").

advanced communications are unavailable because Commission polices did not encourage the recovery of the unique costs of maintaining and building rural networks. Thus, the Commission needs to balance consumer interests by keeping prices affordable, but create compensation mechanisms that provide incentives to carriers to ensure the availability of modern services.

Encourage network investment. Intercarrier compensation and high cost universal service both support the maintenance of, and the expansion, of ILEC network capabilities, particularly in rural and high cost areas. Consumers rely on these ILEC networks to obtain voice, data, and video services, as do competitors who use these same networks to provide services to their own customers. Rural networks are more costly to build and maintain because of the relative scarcity of customers, and the longer distances that signals must be carried.[7] Availability of these rural networks at reasonable and affordable prices is the key to the Section 254 universal service mandate.[8] Therefore, all global reform efforts must be careful not to undermine network provisioning in rural areas.

The Commission should also recognize that large, integrated, urban carriers have been jettisoning their rural properties.[9] They have sold these higher cost and rural study areas to carriers, such as CenturyTel, who have the motivation, experience, and business plan to expand and provide high quality service to rural America at affordable rates. Communications Act policies promote this activity because it reaffirms the core principles of the universal service policy. The Commission cannot address only the narrow interests of large ILECs serving urban America to the detriment of the rural properties that these carriers have abandoned. The Communications Act obligates the FCC to provide support to the consumers located in these

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7 *See* Comments of CenturyTel, Inc., WC Docket No. 05-337, at 2-8 (Apr. 17, 2008).

8 47 U.S.C. § 254.

9 *See, e.g.*, *CenturyTel of Northwest Arkansas, et al.*, 15 FCC Rcd 25437 (Dep. Chief, Accounting Pol. Div., Wireline Comp. Bur. 2000).

rural properties, regardless of the type of incumbent carrier willing to serve these important customers.

II. THE FCC SHOULD TAKE SOME CRITICAL STEPS IMMEDIATELY, EVEN IF IT IS UNABLE TO IMPLEMENT THE MORE CONTROVERSIAL ASPECTS OF COMPREHENSIVE REFORM ALL AT ONCE.

Regardless of how the FCC ultimately decides ultimate reform issues for both intercarrier compensation and universal service, there are some core issues that have attained greater consensus among government policymakers than others. The Commission should not hesitate to quickly adopt those proposals now while continuing to work on other aspects of reform, if that becomes necessary.

First, the Chairman has proposed to reform universal service contribution mechanisms to recover USF assessments based on a combination of working telephone numbers and connections, when the service provided does not employ numbers. The proposal contained in Appendix C would provide a good solution to the current problem of a dwindling interstate telecommunications service contribution base.[10] The Commission should adopt this new USF contribution mechanism immediately.

Second, the identical support rule should be eliminated. CETCs should be required to apply for and receive high cost support only based on their own costs.[11] Policymakers are nearly unanimous in their support of the elimination of the identical support rule because it has led to a windfall for CETCs, without producing any tangible results toward meeting Section

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[10] *ICC-USF FNPRM*, Appendix C, ¶¶ 88, *et seq*. ITTA has also pointed out some useful modifications in terms of ensuring that recordkeeping and payment administration be practical, which CenturyTel supports. Comments of Independent Telecommunications & Telephone Alliance, WC Docket No. 05-337, et al. (Nov. 26, 2008)("ITTA Comments").

[11] The proposal contained in *ICC-USF FNPRM*, Appendix C, ¶¶ 51-52, would be an acceptable way to accomplish this goal.

254's affordability and comparability goals.[12] A reasonable transition for phasing out existing CETC payments would help reduce any economic dislocations which would be caused from a change in the current rules.[13] Wireless providers have failed to show that they are unable to generate revenues from the provision of telecommunications services from which they can recover their costs of service the areas in which they now obtain universal service high cost support.

Third, the FCC should adopt "phantom traffic" rules that require carriers to correctly identify the origination of traffic so that downstream carriers may properly jurisdictionalize and rate traffic that is received from other carriers. One workable way to accomplish this goal would be to adopt the Chairman's proposal contained in Appendix A.[14] Adoption of phantom traffic rules would not only permit proper billing and recovery of applicable charges, but it would also allow carriers to better assess the current level of appropriate intercarrier revenues, which would provide a more solid basis for carriers to assess how an eventual glide path toward unification and reduction of various intercarrier rates could responsibly be accomplished. CenturyTel would make one adjustment to the Chairman's proposal, however. The proposal requires the neutral transit provider to pay the highest level of intercarrier compensation for traffic that is not identified.[15] This proposal would place an innocent tandem owner in the position of financing the phantom trafficker, leaving the tandem owner with the burden of having to track down and recover from the originating culprit. The one change that CenturyTel would make to this

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12 *Identical Support Rule NPRM*, ¶ 1.

13 If the Commission does not want to establish a new cost mechanism for CETCs, it could, on an experimental basis, use auctions to pick among non-ILEC ETCs. However, such a system should only pick one CETC recipient in an area, consistent with the proposal of the Joint Board. *Comprehensive USF Reform Recommended Decision.* ¶ 37.

14 *ICC-USF FNPRM*, Appendix A, ¶¶ 326, *et seq*.

15 *ICC-USF FNPRM*, Appendix A, ¶ 337.

proposal, therefore, would be to follow the USTA approach to as it relates to these payments.[16] The perpetrator of the phantom traffic should pay the terminating carrier the highest applicable rate for the traffic. The transit provider should be able to avoid making the high payments itself if it cooperates with the terminating carrier by providing adequate records from which the perpetrator can be identified and billed.[17]

III. INTERCARRIER COMPENSATION REFORM SHOULD BE INTRODUCED OVER A REASONABLE TIME FRAME.

The need for intercarrier compensation reform has been repeatedly and clearly set forth in the record and will not be repeated here.[18] Such reform, however, must be made only by keeping the public interest goals that were mentioned previously in mind. First, consumer needs should be addressed. The present payment structure between carriers is essentially invisible to consumers. Consumers are no longer focused on the need for decreased long distance and wireless rates. Rather, they are demanding access to reliable, affordable broadband services at speeds that can handle modern Internet applications. Second, access revenues must be preserved at reasonable levels so that an ILEC can continue to recover the costs of providing the network that consumers need to access advanced services, particularly in rural areas. Third, a unified intercarrier compensation rate would go far in reducing regulatory arbitrage, and thereby preserve cost recovery and would produce just and reasonable rate levels. However, taking access rates to zero or near-zero levels may help various carriers, but ultimately, only at the expense of most end users. Therefore, the level of any unified rate needs to be set correctly for rural carriers, establishing a sufficiently long transition to allow carriers to manage revenues and

[16] Letter from Glenn T. Reynolds, Vice President, Policy, USTA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (filed Feb. 12, 2008).

[17] Although CenturyTel has not fully evaluated the lifeline broadband proposals, it does believe that such an approach could provide some useful support for low income subscribers in order to provide broadband services. *See, e.g.*, *ICC-USF FNPRM*, Appendix A, ¶¶ 64, *et seq*.

[18] The filings in CC Docket No. 01-92 are replete with such positions.

expenses over time and to ensure that consumer rates are affordable. Protection of consumer interests and preservation of network cost recovery for rural carriers are at the heart of Section 254's affordability and comparability requirements.[19]

Appendix A of the *FNPRM* establishes a ten-year glide path to unified and dramatically lower terminating rates for all types of intercarrier compensation. It mandates that states employ a "pure" incremental cost standard using a hypothetical network to establish a single terminating rate for each state, regardless of the costs of any individual carriers. Appendix A would permit increases in subscriber line charges ("SLCs") and would compensate only rural rate-of-return carriers for a loss of revenues from such rate adjustments through a special recovery mechanism.[20] The effect of this proposal, whether by mistake or design, effectively throws out both the baby with the bathwater: it eliminates years of carefully crafted and delicately balanced rate regulations, picks winners and losers by carrier type, fails to give adequate consideration to consumer interests or protection to the networks that have supported communications services, and is not in compliance with either the Communications Act or the Constitution of the United States. The proposal is riddled with serious legal errors, which include running roughshod over state jurisdiction, and failing to allow some ILECs the opportunity to recover their prudently incurred costs in deploying telecommunications services, often pursuant to mandatory rules of the FCC. The proposals also ignore rural consumers who are served by carriers, such as CenturyTel, which are willing to focus on those consumers' needs. Adopting the proposals in their entirety would produce years of certain court reversals, serious uncertainty for telecommunications financing, and disaster for rural consumers. These proposals should thus be rejected.

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19 47 U.S.C. § 254(b)(3).

20 *ICC-USF FNPRM*, Appendix A, ¶¶ 159, *et seq.*

A. Consumers Should be Protected Through Establishment of a Reasonable Glide Path To Unified Rates.

Although these dire warnings are advanced with all seriousness, not everything in Appendix A is amiss. The proposal is to be commended for its recognition that reform is necessary to reduce regulatory arbitrage, stabilize intercarrier revenues, and assure good consumer outcomes. It is beneficial in that it acknowledges a lengthy implementation period would be necessary for the significant reforms contemplated. Notwithstanding, specifics of the proposal must be changed in order to accommodate the goals mentioned previously: protect consumer interests, ensure investment in rural networks, and reduce uneconomic arbitrage.

As stated previously, unification of rates would solve the vast majority of the uneconomic arbitrage problem because there would no longer be significant motivation for carriers to mask or misrepresent the true nature of traffic. While it is true that the level of rates can ultimately be one of the causes of a customer or carrier to move its business or reconfigure its network to move out of a particular ILEC territory, most of the time rate levels are not so high as to cause this type of behavior.[21] And this latter type of motivation would be caused by originating rates, not terminating rates, since most customers and carriers have no control over the rates paid for the termination of traffic. Therefore, it is the self-help caused by misidentification of traffic that is the most critical problem right now, not the level of rates. CenturyTel supports US Telecom's comments because they provide a significant framework in which global reform can be achieved.[22]

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21 CenturyTel understands that as a long distance carrier and wireless carrier, both AT&T and Verizon desire lower rates, just as all customers do. The fact that they want to reduce their costs, however, is no justification for foisting a disastrous rate realignment on the backs of rural ratepayers.

22 Comments of US Telecom, WC Docket No. 05-337, et al. (Nov. 26, 2008).

CenturyTel has been on record as supporting unification of access rates, such as that proposed by Embarq last summer.[23] CenturyTel believes, however, that the glide path toward reaching such unification should be done in a manner to protect consumers and reduce the level of any necessary access replacement mechanism ("ARM") that would need to be established in order to make any rate reform constitutional. CenturyTel agrees with the ITTA proposal toward achieving these goals, accompanied by the alternative methods of recovery detailed in Section III.B., *infra*.[24] CenturyTel urges the Commission to adopt the following steps, with respect to rate levels:

- Years 1-3: A price-cap carrier's intrastate terminating access rates shall be unified to its CALLS target rate in equal increments over three years by study area. If the local reciprocal compensation rate is above the CALLS rate it will be reduced to the CALLS level over the same transition.
- Years 4-5: Beginning in year four and continuing through year five, the unified interstate/intrastate/local rate shall be reduced to lesser of the current rate for such service or the carrier's next lower interstate CALLS target by study area pursuant to 47 C.F.R. § 61.3(qq) (*i.e.*, \$0.0095, \$0.0065, or \$0.0055). By way of example, if a study area's current CALLS target is \$0.0095, then it would move to \$.0.0065 in years 4-5; if current CALLS target is \$0.0055 it would stay at this level.
- The Commission shall issue a FNPRM after year 4 to determine whether additional measures are necessary. This FNPRM shall include a referral to the Federal-State Joint Board on Universal Service to address separations and other relevant matters.
- Originating access rates would be frozen at existing rates until the Commission addresses originating access rate levels. Originating access rates should be reviewed as part of the FNPRM process at year 4 as well.

Thus, at the end of the five-year period, each carrier would have a unified terminating intercarrier compensation rate for each study area that is substantially lower than the highest rates which exist today. This plan would produce three main benefits. First, it would reduce

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[23] Comments of CenturyTel, Inc., WC Docket No. 08-152 (Aug. 21, 2008)(CenturyTel supported AT&T's and Embarq's request to unify interstate and intrastate access rates, but opposed AT&T's efforts to drive down the level of terminating access rates below cost).

[24] ITTA Comments, note 10, *supra*.

most uneconomic arbitrage, stabilize carrier revenues, and reduce intercarrier disputes. Second, it would reduce rates significantly for carriers, and moderate any necessary consumer price increases, benefiting all. Third, it would provide rural ILECs with a reasonable glide path, coupled with the alternative cost recovery methodologies outlined below,[25] which would allow them to manage their network and other operations over time in order to accommodate the rate change, while maintaining and expanding rural networks to provide modern voice and broadband services. The ITTA proposal would be a win-win situation for all carriers and consumers. Although it does not give every party, including CenturyTel, everything it wants, it moves all parties and regulators toward their desired solutions and would certainly be better than doing nothing. The *Further Notice*'s proposals, on the other hand, would produce specific winners and losers. The ultimate winners would be dominant integrated communications providers, cable providers terminating increasing amounts of traffic on the public switched telephone network, and CMRS providers that will benefit from lower reciprocal compensation payments. These carriers would see a dramatic and meaningful reduction of hundreds of millions of dollars in the intercarrier compensation they pay today, although there is no assurance that such rate reductions would ultimately be passed on to consumers.

At the end of the year 4, the Commission should then conduct a further proceeding to determine whether the plan has worked, and whether further changes should be implemented. All in the telecommunications industry recognize that a lot of changes can and do occur in four years. Therefore, it would be wise to evaluate then-current circumstances prior to instituting any further changes in much the same way as Verizon suggested a pause in their reverse auction

[25] Any revenue shortfall would be made up of modest SLC increases, and if necessary an ARM, as specified in Section III.B., *supra*.

proposal after some initial experimental auctions were conducted.[26] This is particularly true of controversial and questionable proposals to establish single, hypothetical rates by state, based on an entirely new costing methodology, which do not cover rural carrier costs. Utilizing a phased approach thus simply makes good sense. In the past, the Commission has often decided to conduct further proceedings before implementing further reforms, even when it knew at the time that further reforms were probably already needed. It should follow that practice here.[27]

B. The Commission Must Protect Consumers and Rural Networks by Making Available a Reasonably Sized Mechanism to Replace Reduced Intercarrier Revenues.

Whenever reform of intercarrier compensation has been discussed in the past, the FCC has indicated that some form of an access replacement fund might be necessary to adequately compensate carriers for a reduction in intercarrier compensation rates.[28] Indeed, the availability of such a mechanism was a critical element of both the original *ICF Plan* and the subsequent *Missoula Plan*.[29] It is true that not all carriers would need a replacement mechanism if existing intercarrier rates are already quite low due to operation in low cost geographic areas. However, this is not true in the rural and small town markets that are served by the mid-sized and other

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[26] *See Modernizing Universal Service: A Design for Competitive Bidding*, attached to Comments of Verizon and Verizon Wireless, WC Docket No. 05-337, Appendix (filed May 31, 2007).

[27] *See, e.g., Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps*, CC Docket No. 96-262, 17 FCC Rcd 10868, 10878, ¶ 23 (2002)(FCC reviewed cost material of ILECs in order to verify future increases in SLCs); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report & Order, 16 FCC Rcd 11244 (2001)(FCC agreed to wait to reform rural ILEC USF for a minimum of five years pending further rulemaking action).

[28] *Intercarrier Compensation FNPRM*, ¶ 4.

[29] Letter from Gary M. Epstein to Marlene H. Dortch, CC Docket No. 01-92, transmitting Intercarrier Compensation Forum, Intercarrier Compensation and Universal Service Reform Plan, at 69 (Oct. 5, 2004)("*ICF Plan*"); *See* Missoula Intercarrier Compensation Reform Plan, attached to Letter from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications, Ray Baum, Commissioner and Chair, NARUC Task Force, and Larry Landis, Commissioner and Vice-Chair, NARUC Task Force to Marlene Dortch, Secretary, FCC, CC Docket No. 01-92, at 64, *et seq.* ("*Missoula Plan*").

rural ILECs. High cost characteristics including extremely low customer densities, rugged terrain, difficult accessibility and vast distances exist, regardless of whether a carrier is regulated under price caps or rate of return mechanisms. And these characteristics exist notwithstanding whether a company is privately or publicly owned.

1. An access replacement mechanism is needed for rural price cap and rate-of-return carriers in order to replace per minute intrastate access rates.

In unifying interstate and intrastate access rates, the Commission should take into account the unique circumstances behind the creation and maintenance of the current intrastate per minute switched access rates. Because there remain unique rate recovery elements in intrastate rates that have already been eliminated in the interstate jurisdiction, establishment of an ARM is fully justified. In the interstate jurisdiction, the FCC has previously significantly reduced the level of switched access rates when it required carriers (1) to eliminate the carrier common line element by increasing federal subscriber line charges[30] and (2) to reduce local switching costs by some thirty percent when it established a port rate element, and moving that element to the common line revenue basket.[31] These same reductions in per minute rates generally have not occurred in the intrastate jurisdiction. Therefore, if the FCC is going to reduce intrastate access rates, it would need to establish an alternative recovery mechanism to permit a carrier to recover these foregone costs, thus mirroring interstate rate changes.

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30 *Access Charge Reform,* Sixth Report and Order, 15 FCC Rcd 12962, ¶ 75 (2000) ("*CALLS Order*")(price caps); *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report & Order, 16 FCC Rcd 19613, ¶ 41 (2001)("*MAG Order*")(rate of return).

31 *Access Charge Reform Order*, 12 FCC Rcd 15982, ¶¶ 123, *et seq.* (1997)(price caps); *MAG Order,* ¶¶ 90, *et seq.* (rate of return).

As indicated later in this document, some increase in subscriber line charges would be justified.[32] However, customers in rural areas cannot economically bear the entire brunt of such a rapid shift in cost recovery. Therefore, like other universal service high cost support, a recovery mechanism should be established in addition to moderate SLC increases in order to help rural ILECs reduce intrastate access rates, but not overburden their rural subscribers with the entire burden of such revenue shift.

2. The Commission must provide carriers an opportunity to recover revenues lost from changes to existing intercarrier compensation rates.

Existing carrier compensation rates were established based on years of carefully crafted regulations that were only enacted pursuant to detailed rulemakings and tested by available appellate procedures.[33] Rates themselves were set pursuant to the tariff process, which addressed customer challenges and encompassed detailed regulatory review to ensure that the rates were just and reasonable. Interstate rates are deemed lawful pursuant to congressional mandate.[34] Other intercarrier rates were set pursuant to state rate cases, negotiations between carriers, or by state-conducted arbitration proceedings under the auspices of Section 252 of the Communications Act, and governed by a federally mandated cost standard based on total element long run incremental costs ("TELRIC").[35] The Commission cannot simply throw out these meticulously set rates, and arbitrarily order that they be reduced to some arbitrary level, or to a level based on a state average of multiple carrier costs which may or may not be reflective of

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[32] *See* Section III.B.5, *infra*.

[33] The number and nature of these proceedings with respect to access charges begins with *Investigation of Access and Divestiture Related Tariffs*, 97 FCC 2d 1082, ¶ 69 (1983). There have been literally hundreds of subsequent orders which address rate level and structure issues.

[34] 47 U.S.C. § 204(a)(3).

[35] 47 C.F.R. § 51.505.

one particular carrier's costs. Carrier rates, regardless of the methodology used, have been based on a carrier's own cost characteristics.[36] And carriers have always constitutionally been permitted an opportunity to earn a reasonable rate of return based on regulated assets and costs.[37] These principles and attendant law continue to exist even in the face of intercarrier compensation reform. If the Commission decides to change the rate-setting methodology, it must offer a reasoned explanation, weigh the potential public interest impacts, and give the carrier a reasonable opportunity to recover costs through an alternative associated with regulated services.[38]

In the past, the Commission has typically ordered rate changes for rates that have been previously found to be lawful based on revenue neutral principles.[39] This precedent does not reopen the reasonableness of rates, but rather concludes that one adjustment is met with an equal and opposite adjustment in another area. For example, when the Commission first required certain ILECs to convert to price caps, it ordered them to readjust their rates on a revenue neutral basis in order to begin price caps.[40] The Commission reformed carrier common line cost

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[36] Even TELRIC rates used in the reciprocal compensation context are based on a carrier's own costs because the parties negotiate precise rate levels, and the TELRIC formula, accommodates certain carrier data in establishing rates.

[37] *See FPC v. Hope Natural Gas*, 320 U.S. 591, 600-01 (1944); *see also Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786, ¶ 302 & n.398 (1990) ("*LEC Price Cap Order*").

[38] The U.S. Supreme Court has held that a government agency cannot simply abruptly change the historic regulatory scheme by eliminating compensation mechanisms without providing an adequate way to recover prudent investment that was recovered through an state-imposed rate-setting methodology. *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 315 (1989)("[A] State's decision to arbitrarily switch back and forth between methodologies in a way which required investors to bear the risk of bad investments at some times while denying them the benefit of good investments at others would raise serious constitutional questions.").

[39] Those parties opposing revenue neutral solutions are inevitably customers who understandably want rate declines at all costs. These customer desires, however, cannot take precedence over the need to compensate the builders and maintainers of rural networks for their prudently invested costs.

[40] *LEC Price Cap Order*, ¶ 230.

recovery by ordering decreases in carrier common line charges, while allowing offsetting increases to end user charges and universal service support.[41] Similar revenue neutral policies were followed for ILECs when adjustments to price cap baskets and bands were made, such as when transport services were removed from the traffic sensitive price cap basket and combined with the special access services basket.[42] The instant reform measure should follow these other precedents by adopting a revenue neutral adjustment to create constitutional reform, since carriers must be allowed a reasonable opportunity to recover their costs. Arbitrary rate changes without an alternative mechanism to recover lost revenues do not afford such an opportunity.

3. The availability of an ARM should not depend on whether a company pays dividends to its investors.

Exhibit A indicates that price cap carriers should not be able to receive an ARM in the same circumstances as a rate-of-return carrier would because there is no legal reason to "guarantee revenues" of a company that is regulated pursuant to price caps. This position misunderstands the basis of price cap regulation and the constitutional law applicable to regulated telecommunications companies. Price cap regulation is a different form of regulation from rate of return to be sure, but it still fundamentally restricts the prices of telecommunications services and prevents a carrier from charging rates dictated by the market. Price cap regulation continues to place strict limits on price levels and rate charges due to the operation of the price cap formula and the limits on rate changes within price cap baskets and bands. As such, constitutional law still requires that price cap carriers be given a reasonable opportunity to recover their costs from the charges for these services.[43] In a similar fashion, a regulatory

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41 *MAG Order*, ¶¶ 40, *et seq*.

42 *Transport Rate Structure and Pricing*, CC Docket No. 92-213, Second Report & Order, 9 FCC Rcd 615, ¶ 37 (1994).

43 The FCC recognized this legal issue when it originally adopted price cap regulation. *LEC Price Cap Order* at ¶ 302 & n.398.

agency may not simply order a carrier to change its rates without giving the carrier the opportunity to recover its costs.[44] In the past, any time the ILECs were ordered to make changes, the FCC allowed for such alternative rate recovery, irrespective of whether the carriers were price cap or rate of return.[45]

In addition, the availability of an ARM should not depend on whether a company pays dividends to its investors. Dividends are set at market levels depending on what a potential shareholder demands in order to be willing to provide equity funds to a company. Payment of dividends is crucial to attracting investment in telecommunications companies, and it is no exaggeration to indicate that carriers would not have equity investors without paying dividends given their market characteristics and history. Dividends are also commonly paid by other regulated entities such as electric, water, and gas companies. The payment of a dividend is part of the "cost of equity capital," a figure which regulators have used for years in evaluating a company's return. When a regulatory agency sets an authorized rate of return, it examines both the cost of equity and the cost of debt.[46] It has recognized that the cost of equity is more expensive than the cost of debt because of the differences between the fundamental rights afforded to each class of investors, and the relative element of risk. Regulators have preferred a substantial level of equity investment because it is less risky to the utility, and thus ultimately to ratepayers. Regulators typically evaluate the cost of equity by looking to expert testimony and

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44 In the debate between price cap and rate-of-return carriers, it has been said that rate-of-return carriers are guaranteed a certain level of return. This is incorrect. Rate-of-return carriers are allowed the opportunity to earn a certain rate-of-return when it sets rates, but there is no guarantee that it will be able to actually receive such a return through actual operations. In fact, the doctrine against retroactive ratemaking precludes a rate-of-return carrier from modifying rates to recover past shortfalls. *See, e.g.*, *Consol. Edison Co. of N.Y. v. FERC*, 347 F.3d 964, 969-70 (D.C. Cir. 2003).

45 *See* Section III.B.2, *supra*.

46 *See, e.g.*, *Amendment of Parts 65 and 69 of the Commission's Rules to Reform the Interstate Rate of Return Represcription and Enforcement Processes*, 10 FCC Rcd 6788, ¶¶ 81, *et seq*. (1995).

basing the level of the cost of equity on a hypothetical value pursuant to market studies for firms of a similar size and risk, not based on the actual cost of equity of a particular company.[47] Therefore, the actual payment of dividends is irrelevant to a regulator in determining the cost of capital, or permitted return, calculation.

What is more, the actual level of dividend payments is not part of the regulated revenue requirement and is thus not a consideration in the ratemaking process.[48] The actual level of dividends are not included as a cost of the company for purposes of setting rates that are contained in carrier tariffs.[49] The level of dividends is not reflected in any part of the Tariff Review Plan or other cost filings that companies submit to the FCC. The level of dividends is also irrelevant to any price cap calculation or showing. The level of dividends is likewise not included in any jurisdictional separations allocations. Likewise, the level of dividends is not utilized in setting the amount of universal service fund payments. Therefore, the actual level of dividend payments is literally irrelevant to the regulatory process, and dividends have never been considered by the FCC in any of its proceedings, except as a general theoretical matter in setting an authorized rate of return. Given this fact, it would be unprecedented for the FCC to suddenly refuse to permit a company to recover a portion of its revenues from an ARM based in part on whether it pays dividends.[50] The clear conclusion that should be drawn is that an ARM should

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[47] *Id.*, ¶¶ 88-91.

[48] *Id.* at ¶ 76.

[49] Only the allowed rate of return, which is based on a hypothetical level of debt and equity is included.

[50] In addition, rate-of-return companies pay dividends to their shareholders, whether the company is closely held or publicly held. Therefore, any attempt to single out a publicly held company's payment of dividends is arbitrary and discriminatory and cannot be justified under the law. CenturyTel also notes that AT&T and Verizon also pay dividends to its shareholders. Should the FCC refuse to permit these companies to benefit from access rate discounts that are imposed on other ILECs, if such discounts are passed along to AT&T and Verizon shareholders in the form of dividends? CenturyTel thinks the answer should be no, but the absurdity of this example demonstrates why payment of dividends should also be

be available to any non-National price cap carriers that lack National wireless and local and long distance operations. These carriers operate high cost exchanges that cannot internally generate sufficient revenue levels form rate unification, increases in SLCs, and subject to a local rate benchmark mechanism to support carrier of last resort requirements without additional support.

4. FCC rules should not require that unregulated revenues subsidize regulated revenues.

Another error in logic contained in the rate changes proposed in Appendix A would effectively require a price cap carrier, in order to receive an ARM, to make an economic showing that it was not able to earn a "normal profit" from all revenues, regulated or not, received in a study area.[51] It appears therefore that, if a price cap company sold chocolates or clothes in a study area, those revenues would have to be considered in the mix before it was eligible for an ARM. If a price cap carrier earned high profits from unregulated services or products, it would in essence be forced to cross subsidize its regulated telecommunications offerings, such as for local service provided in a rural area, with competitive revenues. This odd policy conclusion is actually the opposite of the traditional statement of the cross-subsidy problem that the FCC has often imposed rules against: preventing regulated revenue from cross subsidizing unregulated products and services.[52] The extraordinary special showing for price cap carriers contained in Appendix A should not be adopted for three reasons.

First, the FCC has never before required that a carrier cross-subsidize regulated services with unregulated revenues, and it has failed to explain any rational basis for establishing such a new policy now. For instance, low end adjustments in price cap regulations were always

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irrelevant to the issue of whether an ARM should be established and available to a rural ILEC.

[51] *ICC-USF FNPRM*, Appendix A, ¶ 323.

[52] *See, e.g., Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer II),* 77 FCC 2d 384, ¶ 221 (1980)("*Computer II*").

permitted based on revenues received from regulated telecommunications services, not revenues from unregulated products.[53] Second, such a cross-subsidy is unsustainable from an economic perspective and is therefore irrational. The price of competitive products and services are by definition set by the market. Requiring part or all of the revenues to be used to subsidize the price of a regulated service would therefore not affect the price of the unregulated product or service, but would simply cause the company to receive less revenues. Such a policy of appropriating money for regulated products would make the unregulated enterprise uneconomical and eventually drive the carrier out of the business for the unregulated product. Such a result would be unsupportable, and thus would be bad public policy. The FCC has already stated that such cross subsidies are uneconomic in another area and declared them to be inappropriate public policy.[54] Third, because the policy would be uneconomic, the FCC's theory about the ability to recover revenues from other sources would be ultimately unsuccessful, and therefore is irrational. For all of these reasons, the FCC should establish an ARM that is available to all carriers, irrespective of their method of regulation and whether they pay dividends to public shareholders.

5. The Commission should adopt ITTA's reasonable alternative cost recovery proposal.

ITTA has submitted a reasonable proposal for alternative cost recovery to partially replace intercarrier revenues that would be reduced in accordance with the glide path described above.[55] The ITTA proposal contains the following elements:

- An ARM shall be established to enable revenue replacement opportunity for revenue losses due to mandated rate reductions.

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53 47 C.F.R. § 61.45(d)(vii).

54 *Federal-State Joint Board on Universal Service*, First Report & Order, 12 FCC Rcd 8776, ¶ 17 (1997)("*USF First Report & Order*").

55 *See* ITTA Comments, note 10, *supra*.

- The ARM shall be available to non-National price-cap carriers that lack a combination of National wireless and wireline local and long-distance coverage, *e.g.*, all price cap carriers to the exclusion of AT&T and Verizon, the latter of which have advocated specific terminating rates that are presumably sufficient for themselves.
- For Years 1-3, the ARM shall equal annual revenue loss due to intrastate access rate reductions and reciprocal compensation reductions, adjusted annually to reflect access line counts on December 31 of the preceding year.
- For Years 4-5, the ARM shall equal 50 percent of the total reduction attributed to the lowest CALLS-targeted reductions rates, plus 100 percent of the cumulative total from Years 1-3.
- SLC increases shall be phased-in in equal increments during years 1-3 at $0.50 per year for residential lines. SLC increases for multiline business ('MLB") shall be phased-in at $0.75 per year in years 1 and 2, and $0.80 in year 3. Accordingly, the total SLC increase for residential lines shall be $1.50; the total SLC increase for MLB shall be $2.30.

The FCC can also consider adopting a local rate benchmark, based on the national urban local exchange rate, which is currently about $20.76. If a carrier does not price at that level, it would forego ARM support in the amount its rates are below the national benchmark. CenturyTel estimates that the size of the ARM necessary to compensate carriers would be reasonably low given the more modest rate changes that it has proposed, the SLC increases, and rate benchmark proposal. The size of the ARM would certainly be lower than what would be required under the more radical rate reductions proposed in Appendix A. ITTA's more moderate changes would ease consumer burdens, but still allow a carrier to transition to lower rates and maintain investment in rural networks. Furthermore, the proposal does not permit a carrier to recover all reductions in rate revenues, and is therefore not a "make whole proposal." Rather the proposal would require carriers to forego revenues if they were unwilling or unable to raise local rates to a national urban benchmark or through making SLC increases, and would only grant 50 percent of rate reductions made in years 4 and 5. Notwithstanding, CenturyTel believes that this alternative recovery proposal, plus the proposed rate glide path, achieves a balanced solution to intercarrier compensation reform which will benefit all consumers and carrier-customers alike. As indicated previously, the FCC should only consider whether to make further changes to rates or the alternative recovery mechanisms after conducting a further rulemaking after year 5 when it evaluates the implementation of the entire intercarrier compensation reform plan.

IV. THE FCC CAN PROMOTE BROADBAND THROUGH A MORE LIMITED INITIAL PROGRAM THAN THOSE PROPOSED.

The *ICC-USF FNPRM*'s broadband proposals establish a mandate that one hundred percent of an ILEC's territory be covered by broadband within a five-year period in order to receive high cost support under current rules.[56] CenturyTel supports the Commission's interest in promoting the availability of broadband communications services to rural subscribers. However, rural areas can be the most difficult to serve because there are few subscribers willing to pay for the network modifications made to accommodate broadband, and loop lengths and other transport costs already significantly add to the cost of deployment. Therefore, any broadband requirements should be reasonable, and based on these existing network characteristic in rural areas, recognizing that no true business case or customer base would exist in such markets. CenturyTel proposes a modification to the *Further Notice*'s broadband requirements based on these concerns.

CenturyTel supports the proposal of the Federal-State Joint Board, Qwest, and others to establish a limited, broadband pilot project which can provide funds for constructing broadband to currently unserved areas, initially funded at the $500 million level.[57] As ITTA points out in its comments, funding for transport for broadband in rural areas, as well as simply making network changes to accommodate higher speed, could well exceed this level if alternative

[56] *ICC-USF FNPRM*, Appendix A, at 22.

[57] ITTA Comments, note 10, *supra*.

funding mechanisms are found not to exist.[58] Funds for such a pilot program can be obtained by reprogramming existing USF amounts resulting from the elimination of the identical support rule. Although this initial program may ultimately prove too small, starting the program in a measured fashion would give the Commission time to evaluate how the program is operating and to eliminate any bugs in the program prior to committing greater funds, if that proves necessary. On the other hand, a $500 million amount is quite substantial, and will represent a serious commitment to supporting rural broadband capabilities. Such a measured approach would be wise public policy and allow the FCC to learn from the experience.[59]

In addition, CenturyTel submits that a much more reasonable requirement than the Appendix A proposal would be a commitment to cover 90 percent of an ILEC's study area with broadband services within five years, including satellite services. First, no waiver should be required to permit an ILEC to be able to rely on alternative broadband technologies in meeting this 90 percent commitment. Requiring a waiver simply adds to the Commission's burdens, and causes an unnecessary expenditure of time and expense and consequent uncertainty for rural carriers. Use of alternative technologies is reasonable and should be recognized as such from the outset. In addition, before such a commitment could be imposed, the FCC would also have to freeze by study area the existing levels of support so that there would be a stabilized level of support that could sustain such a requirement.[60]

Second, delaying any decision with respect to service to the most difficult to serve ten percent of rural America would be prudent from an investment and deployment perspective. At

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58 *Id*.

59 CenturyTel also supports the ITTA proposal to better address the issue of high cost support for high cost and rural territories of price cap companies, which would adopt a significant portion of the Embarq Broadband Communications Support proposal. *See* ITTA Comments, note 10, *supra*.

60 *See, e.g., ICC-USF FNPRM*, Appendix A, ¶ 30.

the current time, there are substantial questions about where broadband is actually available to subscribers in certain areas.[61] Consequently, these uncertainties make it difficult for a carrier to determine what types of facilities or technologies are necessary to adequately serve those currently unserved customers. By the end of the initial five-year period, CenturyTel expects that efforts to accurately map the availability of broadband will have been completed in accordance with the new broadband mapping law.[62] Once such mapping is available, then a carrier can accurately assess where and what type of additional facilities would be necessary to provide additional services. Therefore, CenturyTel submits that a five-year deployment schedule to cover 90 percent of an ILEC study area is a reasonable requirement, subject to the freeze of current USF payments as indicated above, which will substantially advance the availability of broadband services to rural America.

V. IP-ENABLED SERVICES SHOULD BE TREATED AS TELECOMMUNICATIONS SERVICES FOR PURPOSES OF INTERCARRIER COMPENSATION.

The issue of whether IP-enabled services should bear their fair share of intercarrier compensation has been the subject of discussion for years. In fact, it is at the forefront of many of the current carrier disputes regarding what compensation should be paid. The Commission should find that IP-enabled services are telecommunications services because they are functionally and legally the same as more traditional voice services that use ILEC facilities.

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61 *See, e.g., Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans*, WC Docket No. 07-38, 23 FCC Rcd 9691 (2008).

62 Broadband Data Improvement Act, Pub. Law 110-385 (2008), *to be codified at* 47 U.S.C. § 706.

In its *IP-Enabled Services NPRM*, the Commission sought comment on the very issue of "the extent to which access charges should apply to VoIP or other IP-enabled services."[63] In the NPRM, the Commission indicated the dubious implications of allowing certain service providers to avoid paying for their use of LEC facilities based on the technology platform employed:

> As a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network. We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways.[64]

The FCC should adopt this conclusion.

What is more, Embarq filed a Petition asking that the FCC forbear from applying the ESP exemption to VoIP traffic that is transmitted through the public switched telephone network ("PSTN").[65] Embarq argues that the ESP exemption has never been applied to IP telephony and that it would be inappropriate to extend the exemption to this type of traffic. Embarq asks that, to the extent that the FCC believes the exemption does apply to such traffic, it forbear from applying the exemption to IP-originated phone-to-phone voice traffic that terminates on the PSTN.[66]

CenturyTel fully supports Embarq's Petition for the reasons stated in Embarq's Petition. The FCC has never applied the ESP exemption to voice telephony traffic provided by a VoIP provider sending calls to the PSTN. The exemption was adopted twenty years ago when the

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63 *IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No. 04-36, 19 FCC Rcd 4863, ¶ 61 (2004) ("*IP-Enabled Services NPRM*").

64 *Id*.

65 *Petition of Embarq Local Operating Companies for Limited Forbearance under 47 U.S.C. § 160(c) from Enforcement of Rule 69.5(a), 47 U.S.C. § 251(b), and the Commission Orders on the ESP Exemption*, WC Docket No. 08-08 (filed Jan. 11, 2008).

66 Embarq Petition for Forbearance at 17.

Internet was still in its infancy.[67] The exemption permitted the ESP to provide service to its customers interacting with the Internet through purchase of local service tariffs, rather than through tariffs offering federal switched access charges. It has never been applied to the more typical VoIP calling pattern where the VoIP provider's customers call customers on the PSTN, just like regular voice calling happens today.

IP telephony is not deserving of the ESP exemption. Voice calling has been around for over one hundred years and there is no public policy reason that justifies any voice provider avoiding payment of the same types of charges for interconnection to the PSTN. To adopt different compensation arrangements is not only discriminatory, but it also skews competition for voice telephony and advantages one carrier, the VoIP provider, over every other. Applying the ESP exemption to IP telephony also sets up an additional opportunity to engage in unreasonable arbitrage, which the FCC has been moving to eliminate.[68]

The FCC should end this unreasonable free-ride on ILEC networks that has been caused by the attempt of IP-enabled service providers to avoid intercarrier compensation. The Commission should find that IP-enabled services are telecommunications services, subject to the appropriate level of intercarrier compensation applicable to the jurisdictional nature of the traffic.

VI. CONCLUSION

The Commission should be commended for making bold proposals to fundamentally reform intercarrier compensation and universal service. However, as described fully herein, the Commission should alter those proposals to produce greater benefits for consumers, protect maintenance and expansion of rural networks, stabilize the universal service mechanism, and

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67 *See, e.g., Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, CC Docket 87-215, Order, 3 FCC Rcd 2631, ¶¶ 2 , 18 n.51 (1988)("*ESP Exemption Order*").

68 *See Intercarrier Compensation FNPRM* , ¶ 3.

eliminate uneconomic arbitrage. By making more moderate rate changes and alternative recovery mechanisms available for all eligible ILECs, the FCC can assure itself that it will minimize consumer and carrier disruptions, follow the law and Constitution, while moving forward in its quest for reform. It will avoid the bait-and-switch impact of the most radical proposals, thereby easing the transition to a new mandated regulatory rate structure and preserve rational policies impacting carriers who are committed to serving rural Americans. In all events, the FCC should adopt certain more limited measures immediately, including a new USF contribution mechanism, elimination of the identical support rule, and phantom traffic rules, which have already gained substantial acceptance by policymakers and the industry. The FCC should also immediately move to define the proper treatment of IP-enabled traffic.

Respectfully submitted,

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November 26, 2008

Certificate of Service

I, Gregory J. Vogt, do hereby certify that I have on this 26th day of November 2008 caused a copy of the foregoing "Comments of CenturyTel, Inc." to be served by electronic mail upon the following:

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